IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 206 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME-TAX

Versus

ELECTRO CONTROLS

Appearance:

1. INCOME TAX REFERENCE No. 206 of 1989
MS MONA BHATT for Petitioner No. 1
MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 20/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question has been referred for our opinion in respect of assessment year 1984-85:-

"Whether the Appellate Tribunal is right in law and on facts in deleting the addition of Rs.35,272/- on account of unpaid sales-tax under Section 43 B of the I.T. Act, 1962 ?"

2. We have heard Ms Mona Bhatt, learned counsel for the revenue and Mr RK Patel learned counsel for the respondent - assessee.

3. The controversy pertains to the amount which was collected by the respondent - assessee as sales-tax in the last quarter of the previous year but payable statutorily in the subsequent year. The Tribunal had held in favour of the assessee in view of decision of the Andhra Pradesh High Court in 173 ITR 708.

4. At the hearing today, our attention is invited to the decision of the Supreme Court in Allied Motors (P.) Ltd. vs. Commissioner of Income Tax, (1997) 224 ITR 677. The Apex Court has held that as per the first proviso added to Section 43B by the Finance Act, 1987, the main part of Section 43B will not apply in relation to any sum which was actually paid by the assessee in the next accounting year if it was paid on or before the due date for furnishing the return of income in respect of previous year, in which the liability to pay such sum was incurred and the evidence of such payment is furnished by the assessee along with the return. Explanation 2 was, therefore, added by Finance Act, 1989 with retrospective effect from 1st April, 1984 for the purpose of removing any ambiguity about the term "any sum payable" under clause (a) of Section 43B.

5. Following the aforesaid decision, we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

6. The Reference accordingly stands disposed of.

(M.S. Shah,J)

(K.A. Puj,J)

zgs/-